

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED
03 AUG 27 AM 10:19
U.S. DISTRICT COURT
N.D. OF ALABAMA

THOMAS G. EUBANK,

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PLAINTIFF,

)

VS.

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CV-02-H-2737-S

Jm

SUN LIFE ASSURANCE COMPANY
OF CANADA; FOREST CITY TRADING
GROUP, INC.; and BIRMINGHAM
INTERNATIONAL FOREST PRODUCTS,

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)

DEFENDANTS.

ENTERED

AUG 27 2003

MEMORANDUM OF DECISION

On July 3, 2003 defendant Sun Life Assurance Company of Canada filed a motion for summary judgment in its favor with regard to the only remaining claims against it as articulated in plaintiff's May 8, 2003 Second Amendment to Complaint. On July 21, 2003 Sun Life submitted evidence in support of the motion and on July 28, 2003 Sun Life submitted a brief in support of the motion. On July 29, 2003 plaintiff submitted evidence in opposition to the motion but has not submitted a brief in opposition thereto. More importantly, on August 5, 2003 in his brief in opposition to the motion for summary judgment filed by defendants Forest City Trading Group, Inc. and Birmingham International Forest Products, plaintiff states the following:

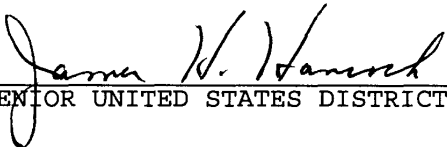
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The insurer appears to have acted properly in denying this "waiver of premium" because the employer/defendants improperly allowed the time to expire for the appropriate application for this "waiver of premium."

The motion for summary judgment by Sun Life is now under submission.

Having considered all of the foregoing, the court concludes there is no dispute as to any material fact and that Sun Life Assurance Company of Canada is entitled to summary judgment in its favor. A separate order will be entered. Pursuant to Fed. R. Civ. P. 54 the court expressly determines that there is no just reason for delaying entry of a final judgment with regard to the claims against Sun Life and expressly directs that the judgment to be entered following this order be entered pursuant to Fed. R. Civ. P. 54(b).

DONE this 27th day of August, 2003.



SENIOR UNITED STATES DISTRICT JUDGE